

Attorney's Docket No.: 06666-032001/USC2864

**BEST AVAILABLE COPY**REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested.

The section 112 rejections to multiple claims based on lack of antecedent basis have been obviated herein by amendment.

Claims 1, 3-16, 19, 21-26, 29 and 31-33 stand rejected under 35 USC 101 as allegedly being directed to non-statutory subject matter. This contention is respectfully traversed, because the claims as a whole define a technique of cryptography which requires encrypting information. In each of the claims, information is encrypted, and changed by the encryption. Therefore each of the claims produces a "useful concrete and tangible result" and each of the claims also changes something to a different state or thing, here, an encrypted message.

Referring in detail to the "interim guidelines for patent subject matter eligibility" promulgated by the patent office, the first prong of the examination should be to determine precisely what applicants have invented and are seeking to patent, and how the claims relate to and define that invention. See page 3 of the guidelines. Here, applicants have invented an entirely new and different way of encrypting information, and one which may be orders of magnitude more secure than previous systems. Taking Claim 1 as initially being representative,

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Attorney's Docket No.: 06666-032001/USC2864

moreover, the cryptography method defined thereby determines information to be encrypted and encrypts the information in a specified way. In order to emphasize that the information is changed, Claim 1 has been amended to recite that the encryption is "to form encrypted information"

According to the interim guidelines, determination of statutory condition follows basically a two-part test: first determining whether the claimed invention falls within an enumerated statutory category (guidelines, page 14); and second, determining whether the claimed invention falls within one of the judicial exceptions to the category. Different tests are given by the guidelines to determine whether the claim is a practical application of the recited algorithm. The two different tests given are:

- does the invention transform an article or physical object to a different state or thing, and
- does the claimed invention produce a useful concrete and tangible result.

Either of these is stated by the guidelines to be sufficient to make a claim statutory.

Page 20 explains that physical transformation is one example of how an algorithm may bring out a useful application. Physical transformation requires that something be changed to a different state or thing. It is clear that the subject matter

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Attorney's Docket No.: 06666-032001/USC2864

being transformed does not need to be a physical or tangible object, but rather it can be electric signals or electromagnetic waves. See, ex parte Lundgren board of appeals decision.

Here, in this specific case, the information is encrypted to form encrypted information. This encrypted information is different than the original information, and hence this claim transforms the information into a different state or thing.

The next issue of "concrete, useful and tangible result" requires that a utility be specific, substantial and credible. Encryption is used in various applications. For example, encryption is commonly used in e-mail communication, and even in the patent office's electronic filing and PAIR systems. The encryption of information as defined by Claim 1 is clearly concrete, useful and tangible.

Claim 1 should therefore be completely statutory for these reasons.

Claim 19 defines a cryptography method which, like Claim 1, determines information and encrypts the information to form encrypted information. Again, this changes the information to a different state or thing, and also forms a concrete, useful and tangible result.

Claim 29 defines a program on a computer which encrypts a message into an encrypted message which should be statutory for reasons stated above. In addition, however, Claim 29 requires

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Attorney's Docket No.: 06666-032001/USC2864

sending the encrypted message, which is clearly a real world operation. Claim 29 also requires decrypting the message which should be statutory for similar reasons to those discussed above.

For all of these reasons, and with all due respect, it is respectfully suggested that the rejection under section 101 is incorrect, that all of the claims are in fact statutory, and therefore that the rejection under section 101 should be withdrawn.

Some new claims are also provided, which are even further statutory, by reciting the uses of the disclosed encryption system.

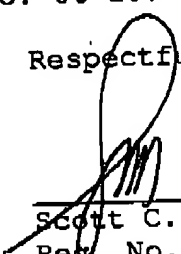
It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

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Attorney's Docket No.: 06666-032001/USC2864

Applicant asks that all claims be allowed. No fee is believed to be due, however please apply any applicable charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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